



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 17.07.2000
COM(2000) 454 final

Proposal for a

COUNCIL DECISION

regarding the position to be taken by the Community within the ACP-EC Council of Ministers with a view to adopting a decision on transitional measures to cover the period between 1 August 2000 and the entry into force of the ACP-EC Partnership Agreement

(presented by the Commission)

EXPLANATORY MEMORANDUM

At the ministerial conference held on 2 and 3 February 2000, the negotiation for a new ACP-EC Partnership Agreement was successfully concluded. The Agreement was signed in Cotonou, Benin, on 23 June 2000 and shall be submitted for ratification. Experience shows that the ratification process will take between 18 and 24 months. Article 366(3) of the current Lomé Convention stipulates that the ACP-EC Council of Ministers must adopt any transitional measures that might be required until the new provisions enter into force. Such a decision would therefore have to be taken by the ACP-EC Council of Ministers in conjunction with the signature of the new Agreement or, by means of delegation of powers, by the ACP-EC Committee of Ambassadors.

Provision has already been made to cover the period beginning with the expiry of the revised fourth ACP-EC Convention on 29 February 2000 (decision by the ACP-EC Committee of Ambassadors of 28 February). The decision is valid until 1 August 2000. During this period, the application of most of the provisions of the current Lomé Convention has been extended.

For the period between 1 August 2000 and the entry into force of the new Agreement, the Commission is of the view that most of the provisions of the new Agreement should be provisionally applied. The benefits in terms of increased efficiency and impact of co-operation under new Agreement should be reaped as soon as possible.

However, provisions that relate to the release and implementation of financial resources and instruments of the 9th EDF cannot take effect before the financial protocol attached to the Agreement enters into force. Financial co-operation during the interim period will therefore be financed with resources remaining from the 8th or previous EDFs. It is proposed that the instruments of the previous EDFs remain in place. Transitional arrangements are foreseen with respect to STABEX and SYSMIN.

In contrast, programming of resources available under the 9th EDF may begin before the entry into force of the new financial protocol. Such programming may imply an indicative allocation but no commitment of funds that will become available under the 9th EDF. The appropriate decision-making procedures on programming decisions and preparation for the timely implementation of EDF 9 as soon as the resources can be accessed must therefore also be in place. To this end, the Commission equally proposes to provide for a provisional application of the pertinent provisions of the Internal Agreement establishing the 9th EDF. This approach is in conformity with that taken on the occasion of the transition from the 7th the 8th EDF¹.

In accordance with the procedure described in the second subparagraph of Article 300(2) of the Treaty establishing the European Community, the Council of the European Union is responsible for determining the Community's position on the transitional measures to be adopted to cover the period in question. The Commission considers that the Council should adopt the attached draft proposal for a Council decision for provisional application of the ACP-EC Partnership Agreement for the period of 1 August 2000 until the completion of the ratification process.

¹ OJ L 327 of 30.12.1995 p.16

Proposal for a

COUNCIL DECISION

regarding the position to be taken by the Community within the ACP-EC Council of Ministers with a view to adopting a decision on transitional measures to cover the period between 1 August 2000 and the entry into force of the ACP-EC Partnership Agreement

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular the second subparagraph of Article 300(2) in conjunction with Article 310 thereof,

Having regard to the proposal from the Commission,

Whereas:

- (1) Article 30 of the fourth ACP-EC Convention, as amended by the agreement signed in Mauritius on 4 November 1995 (hereinafter referred to as 'the Convention'), establishes a Council of Ministers with decision-making powers determined by the Convention.
- (2) In accordance with Article 366(3) of the Convention, the Council of Ministers must adopt any transitional measures that might be required until a new Convention enters into force.
- (3) By decision of 28 February 2000, the Committee of Ambassadors adopted transitional measures to be applied following the expiry of the revised Fourth Lomé Convention.
- (4) The Community's position within the Council of Ministers regarding the latter's adoption of a decision regarding transitional measures on the expiry of the transitional measures currently in force should be determined,

HAS DECIDED AS FOLLOWS:

Sole Article

The Community's position within the Council of Ministers regarding the adoption of transitional measures to cover the period between 1 August 2000 and the entry into force of the ACP-EC Partnership Agreement shall be based on the draft Decision annexed hereto.

Done at Brussels,

*For the Council
The President*

ANNEX

Draft

DECISION OF THE ACP-EC COUNCIL OF MINISTERS

regarding transitional measures valid from 1 August 2000 until the entry into force of the ACP-EC Partnership Agreement

THE ACP-EC COUNCIL OF MINISTERS,

Having regard to the fourth ACP-EC Convention, signed in Lomé on 15 December 1989 and revised in Port Louis on 4 November 1995, hereinafter referred to as 'the Convention', and in particular Article 366(3) thereof,

Whereas:

- (1) Negotiations for a new ACP-EC Partnership Agreement, hereinafter referred to as 'the Agreement', were concluded in Brussels on 2 and 3 February 2000. The Agreement will not enter into force until the ratification processes in accordance with its Article 93 have been completed.
- (2) The ACP-EC Committee of Ambassadors took a decision on 28 February 2000 whereby transitional measures applicable until 1 August 2000 were adopted.
- (3) In accordance with Article 366(3) of the Convention, the Council of Ministers shall adopt transitional measures to cover the period between 1 August 2000 and until the entry into force of the Agreement.
- (4) With the exception of provisions concerning the release and implementation of financial resources from the ninth European Development Fund (EDF), the Parties deem it appropriate to provide for an early application of the Agreement as from 1 August 2000.
- (5) Provisions that relate to the release and implementation of financial resources from the 9th EDF cannot take effect before the financial protocol attached to the Agreement enters into force. Financial co-operation during the interim period will therefore be financed with resources remaining from previous EDF.
- (6) In contrast, programming of resources available from the 9th EDF may begin before the entry into force of the financial protocol attached to the Agreement. Such programming may imply a indicative allocation but not a commitment of funds available under the 9th EDF.

HAS DECIDED AS FOLLOWS:

Article 1
Provisional application of the Agreement

1. As of 1 August 2000, the provisions of the Agreement shall be put into early application with the following exceptions:
 - (a) Annex I
 - (b) Annex II, Chapter 1
 - (c) Annex IV: Chapter 3 through 6.
2. The applicable provisions of the Agreement shall supersede the provisions of the Convention in the equivalent fields.
3. The provisions listed in paragraph 1 as 'applicable' will also, as of 1 August 2000, be valid for any signatory States of the Agreement that were not parties to the Convention.
4. The Agreement is contained in annex to this decision.²

Article 2
Continued applicability of the Convention

The following provisions of the Convention shall remain applicable for all or parts of the interim period:

- (a) Part 3, Title II, Chapter 1 of the Convention shall be extended until 31 December 2000 for transfer decisions for the 1998 and 1999 application years and for the reimbursement of the residual balances arising under the second Financial Protocol (Article 195.a);
- (b) Part 3, Title II, Chapter 3 of the Convention shall be extended until 31 December 2000 for operations for which a request for aid was submitted before 1 August 2000. Subject to the provisions of the Agreement, special attention will be given within the programming exercise to the needs of countries which have submitted requests for aid prior to 1st August 2000 but for which decisions cannot be taken before 31 December 2000 due to necessary procedures for taking such decisions;
- (c) Part 3, Title III Chapter 3 Sections 3 and 4 shall remain applicable until the funds are exhausted. This shall include any increase in risk capital managed by the European Investment Bank decided by the ACP-EC Council of Ministers during the transitional period.
- (d) Part 3, Title III, Chapter 5
 - i. Section 1, for ACP States that due to exceptional circumstances have not completed the programming exercise under the Convention

² The Agreement is set out in COM (2000)324, 23 May 2000

- ii. sections 2 – 6,

shall remain applicable until the entry into force of the Agreement.

- (e) Part 3, Title III, Chapter 6 shall remain applicable until the entry into force of the Agreement.
- (f) The provisions relating to the power of the Council of Ministers to decide on the use of unallocated resources from the 6th, 7th and 8th European Development Funds in accordance with Articles 195.b, 219.2.d, 245.2, 257 and 282.5.

Article 3
Resources from the 6th, 7th and 8th EDF

1. Resources from the 6th, 7th and 8th European Development Funds, that have been allocated to an ACP State before 1 August 2000 in accordance with Article 245.1, Article 254 and Article 281 of the Convention, shall remain allocated to that State. The balances of these funds shall be used for programming consistent with the relevant provisions of the Agreement.
2. Resources from the 6th, 7th and 8th European Development Funds, that have been allocated to an ACP region before 1 August 2000 in accordance with Article 160 of the Convention shall remain allocated to that region. The balances of these funds shall be used for programming consistent with the relevant provisions of the Agreement.
3. Without prejudice to Article 2 (d) (i), unallocated resources from previous European Development Funds shall be allocated to ACP States and regions and used for programming consistent with the relevant provisions of the Agreement. Unallocated resources in this context are

Resources from the 6th, 7th and 8th European Development Funds that have not previously been allocated for a specific ACP State or region in accordance with paragraphs 1 and 2 above; and Resources of the Stabex and Sysmin instruments that remain after the period defined in Article 2.1.a and 2.1.b of this Decision, save for a reserve of (figure to be determined) to finance any decision which shall be taken before 31st December 2000. Upon entry into force of the present Decision, funds available on the Stabex account will gradually be transferred to the special EDF account. The remaining funds from the reserve available on 31 December 2000 on the special Stabex account will be transferred to the special EDF account before 31 December 2001.

Article 4
Rules of procedure

1. Taking into account the provisional application of the Agreement and in accordance with its Articles 15(5) and 16(3), the Council of Ministers and the Committee of Ambassadors shall adopt their rules of procedure within 6 months of the entry into force of this Decision.

2. Until the adoption of the rules of procedure referred to in paragraph 1, the rules of procedure of the Council of Ministers as adopted by the Decision of 22 May 1997³ and of the Committee of Ambassadors as adopted by the Decision of 18 March 1997⁴ shall remain applicable.

Article 5
Implementation of this Decision

The ACP States, the Member States and the Community shall be required to take the steps appropriate to each of them with regard to the implementation of this Decision.

Article 6
Entry into force and validity of this Decision

This Decision shall enter into force on 1 August 2000. It shall apply until the Agreement enters into force but no longer than 1 June 2002. The Council of Ministers may decide to extend its application.

Done at

For the ACP-EC Council of Ministers
The President

³ OJ L 220 of 11.8.1997 p. 58

⁴ OJ L 220 of 11.8.1997 p. 62